

**BOROUGH OF DUMONT  
BERGEN COUNTY, N.J.  
ETHICS BOARD  
MINUTES - MARCH 17, 2011**

Meeting called to order by Chairperson Westphal at 7:13pm.

Flag Salute

SUNSHINE LAW: The notice requirements of the Open Public Meetings Act of the State of New Jersey have been satisfied by the inclusion of the date, time, and place of this regular meeting in the annual schedule and notice of regular meetings of the Ethics Board. Such annual schedule and notice of regular meetings is posted at Borough Hall, was sent to The Record and the Star Ledger, posted on the Borough website and filed with the Borough of Dumont on November 24, 2010.

Anne Marie Rizzuto, Board Attorney, administered the Oath of Office to Mr. Edwin (Ted) Pomeroy.

ROLL CALL: Adriann Green, Ted Pomeroy, Thomas Reagan, Joanne Westphal - present  
Salvatore Mastroeni-absent.

Also in attendance were Ann Marie Rizzuto, Board Attorney, and Kathy Schaefer, Board Secretary.

Motion to open the meeting to the public: Ms. Westphal

Second: Ms. Green

All in favor: Aye

Motion passed.

Ms. Rizzuto asked Mr. Zeitlinger if he wanted to address the Board. Mr. Bob Zeitlinger, 237 Lexington Avenue, advised what he wanted to do was to get everyone's opinion on the request for expanded financial disclosure; Ms. Rizzuto advised that was on the agenda for a little later in the meeting. Mr. Zeitlinger stated that he also has another general question. He does not know if it is within the Board's powers and he doesn't believe it is an ethical violation but it may be a conflict of interest on the Mayor and Council and I can run it pass and you can tell whether it is within your purview and that is, in this DPW case, the hiring of the Borough Attorney Gregg Paster to issue subpoenas and do the investigation into what happened and why and that sort of thing and here is why he thinks it is a conflict of interest. This, for better or for worse, is basically a case of current administration saying the past administration did something wrong, dropped the ball, which may or may not be true, but the person who was hired to investigate this has been hired by or employed by the current governing body. That seems on its face to be a conflict of interest. The question is if that is a conflict of interest, does the Board provide guidance to the Mayor and Council on that. Ms. Westphal asked Mr. Zeitlinger "you are saying because Gregg Paster was appointed by the Mayor and Council that it is a conflict of interest for him to?" Mr. Zeitlinger stated "for him to investigate the DPW/DEP issue because the

DPW/DEP issue is squarely an issue where the old administration says the new administration knew about it and the new administration says the old administration knew about it.” He stated usually in instances like this, you would hire an independent authority to do the investigation. Now, his understanding just from reading the newspapers is that Mayor McHale asked the New Jersey Attorney General Paula Dow to investigate it but she hasn’t done anything and he said we have to move on this so we are going to hire Gregg Paster to do it.

Ms. Rizzuto asked if any of the other Board members had any inquiries, because she does have some comments. She asked if this is an issue with an environmental contamination somewhere in the borough. Mr. Zeitlinger responded yes and he can give background but anybody else who follows it, I am not an expert on it, I just know what he reads in the paper. He stated basically there is a DEP contamination issue that came up in the late ‘80s or the mid ‘80s and the town supposedly worked on it and was going through the right processes, then somewhere around 1995 to 2000, the paperwork ends. DEP is saying the township is in violation of a memorandum of understanding to remediate it in a timely fashion so the DEP showed up at the DPW site this year, July, August, September, etc., in that timeframe and said nothing has been done on this and you basically dropped the ball for 10, 12, 13 years. There is probably going to be fines and extra costs, etc. He stated there was a story the other day about T&M having to spend \$190,000 to locate wells and do soil tests, etc. He stated in the meantime there have been stories about this whole issue where Paster’s office subpoenaed former mayor Don Winant, former borough admin Jack Eckel, Charlie Grillo, Scott Manno, Lisa Boyd, Eddie Orr. Ms. Rizzuto asked who are all those people. He stated those are former council members and then Winant is the former mayor. He stated this is a quote from the McHale in the *“Bergen Record”*- “Unfortunately this is just another example of how poorly Dumont was managed by my predecessors and once again taxpayers will be stuck with the bill.” He stated he only mentioned that just to show you that it is an old versus new sort of thing.

Mr. Reagan asked so the conflict would be that the old administration is saying that when we left we told the administration about it, that this had to continue and we clean our hands of it and the new administration is saying we took over and this was never mentioned and we know nothing about it.

Ms. Rizzuto stated that the current “investigation” is to get to the bottom of the issue of why the remediation stopped versus dealing with the remediation. She stated to Mr. Zeitlinger then your beef is about the investigation rather than dealing with the remediation. She stated that we have to deal with the remediation, either way.

Mr. Pomeroy stated that in his professional life, he has dealt with contaminated sites, and typically what happens is they discover contamination and initial work is done. The personnel of these firms who have the degrees and the training to do this kind of work, they change employers over time and while they are at a current employer, they sign a confidentiality agreement. So what you need with a subpoena is that ends all the confidentiality- I have been ordered to therefore disclose and recollect what I found. It also provides the person providing the information, either by deposition as a result of the subpoena, some immunity from making what might be incorrect statements or poor recollection. He stated that from what he understands, nobody who did any of the initial work was willing and able to talk about their initial

investigation without some clearance from liability. He stated, he had problems with it and he asked around, and somebody told him that was the case. Mr. Zeitlinger stated his understanding is that the professional service firms that were involved are not under investigation per se for not following up and not doing what they were supposed to do. It's a question with the administration at that time and the old administration says things like I can't wait to be subpoenaed because I am anxious to speak on the record, and that sort of thing.

Ms. Rizzuto addressed the chair, saying that she would like to remind the Board that the public portion is not necessarily a give and take between the Board and the citizen and that she would like to bring the focus back to the real issue here that Mr. Zeitlinger is raising, which is whether or not there is a conflict of interest in having the current Borough Attorney investigate a matter that is current for the Borough, but may involve past public officials and past contractors hired by either the current governing body or the former governing body and whether or not that investigation can be adequately performed by the current Borough Attorney. She stated she is not prepared at this time to give the Board a direction that yes, it's something this Board would undertake, but clearly the Board of Ethics has jurisdiction to investigate the allegations of conflict of interest. She is not certain that this rises to a level of conflict of interest. She does feel that this Board even on the inquiry of one citizen versus five hundred citizens could act. There is probably public interest in knowing about the substantive issues versus what Mr. Zeitlinger wants to know which is does the attorney have a conflict of interest. She stated that generally attorneys are familiar with conflicts of interest and the whole conflict of interest law emanated from lawyers and clients and whether or not there is a conflict of interest. The way we analyze it is not so much does he have a conflict of interest as to the prior administration because that is not his client, his client is the Borough and the Council, does he have a conflict of interest as to the Borough and the current Council in conducting this investigation. She stated that on the face of it, it appears that it would not rise to the level of a legal conflict of interest. There has to be an actual conflict of interest; if, for example, there was an allegation that he served as borough attorney for the former administration and he is serving as borough attorney now, that seems like he would have to say get someone else, but she knows that borough attorneys and borough administrators have served as hearing officers in investigating personnel matters for their current employee and that is clearly allowable. She stated that while she appreciates what Mr. Zeitlinger is saying but clearly and often if you know environmental cases, it's a finger-pointing thing and that seems to be what it is and she doubts that we would find if we really dug into the research on this that this would be a conflict of interest and it would be the responsibility of Mr. Paster to recuse himself on an individual basis if he feels there is a conflict of interest. She said that at this point she feels that we do have enough information for you to say to me can you look at that and report back to us as a Board at the next meeting as to whether that is but in the meantime the investigation is ongoing, clearly the borough has given him the authority to issue subpoenas and conduct this investigation. She stated to Mr. Zeitlinger that since this is a time sensitive matter, if you feel that it is truly a conflict of interest, there are methods for you to appeal the resolution that appointed him legally in a court room setting versus waiting for this Board to make a decision. On the other hand if the Board feels you want to discuss this right now and you have enough information based upon basically the factual information you have heard and the sort of legal advice I am giving you without having done the real research, you can say I don't think this needs any further legal work by this Board, this doesn't seem like something the Board should be involved in or you can say to me yes, it is a conflict of interest, let's have a hearing about it. She

stated that she feels there is nothing wrong with Mr. Paster doing this investigation and she assumes that sooner or later if there is litigation that comes of it, that not only is there going to be former governing body but it might involve the current governing body and that may very well be a conflict of interest, so may be the citizen's concern is an appropriate concern, is there something in a wider investigation that would prohibit him from doing this, but it seems to her that getting to the bottom of this, who knew what, where and when, is beside the issue of the borough had the responsibility a year ago, five years ago, twenty years ago and frankly the DEP did too so "who dropped the ball" is not just the borough obviously. This is not unusual in the remediation area.

Ms. Green stated do we use our attorney to find out what is going on or do we wait for the State's Attorney General to get back to us, which apparently they are not doing anything and we could wait five years for the attorney general to come to us. She thinks that they probably were cleaning it up way back when and the rules and regulations were probably a lot less stringent than they are now, so it is probably more problematic now but she doesn't really think that anybody is at fault, it was just something that happened and they probably thought that they cleaned it up and probably they never got the final papers from the state, the state does not act very quickly like you said, and now they are finding out what is going on, so we find out more by investigating ourselves or should we just wait for the state to find out what happened.

Ms. Rizzuto stated if the DEP had been issuing notices in the last five years or two years or a year and the current governing body ignored that, then you can pinpoint, but the fact of the matter is that it is highly unlikely that the DEP is going to start issuing penalties or fines unless they fail to do something now. It has been brought to everyone's attention, it's out in the public and the DEP is not looking to get money from a small borough in the forms of fines or penalties, they are looking for remediation. She is not quite sure why the governing body took the direction of we need an investigation and here's the people we think we want to investigate, but that is clearly their bailiwick. The appointment of Mr. Paster appears not to be wrong unless the target is some kind of criminal investigation and it is going to bring in current people.

Mr. Zeitlinger stated that according to the former mayor Winant, he says that the current administration knew about this in 2005. So, it is an issue of where the culpability, criminal culpability because that's the term Gregg Paster used in one of the stories. The criminal culpability could also include members of the mayor and council who served in 2005, 2006 and 2007. It is an issue where if you are looking at it and the story says they issued subpoenas to people who served from 2000 to 2004. The issue has been raised as to if the current mayor and the people who served on council, he was a councilman back then, what they knew or when they knew about.

Ms. Green stated that she thought what it was is that there were papers that they could not find and that was what they were trying to find out from the other council members what they remembered from the whole thing. Mr. Zeitlinger, addressing Ms. Green, stated that she made a comment that the Attorney General isn't doing anything, so if we don't have Paster do it, then it wouldn't get done. His point is that out of all the attorneys you could hire to do an investigation why did we hire the one that is also our Borough Attorney. She stated isn't it more cost effective, he is already working with us. Mr. Zeitlinger stated he does not know that to be true,

he doesn't know if he gives a volume discount. Ms. Rizzuto stated that costliness obviously is always a concern in any governing body when hiring professionals but that doesn't over-ride conflict of interest. This is kind of a dilemma that becomes time sensitive, the only other thing she can say or recommend is possibly just in a concise manner send a memo to the Council that a concern was raised by a citizen and, for the record the citizen can do this on his own, does Mr. Paster have a conflict of interest in conducting this investigation and she really thinks that the crux of it is if the investigation expands beyond two current members of the council for whom he is being beholden as being hired by them. So if there is a potential for that conflict, remember the law is no longer potential or appearance, the law is, is there a conflict of interest, and he may feel there is no conflict of interest. On the other hand, if the Council considered this, maybe they want to reassess who they hired. She said she can't tell for sure whether he has a conflict of interest but bringing the matter to the attention of the Council through some kind of communication or whatever may be the simplest way to have them think about it.

Mr. Reagan advised that going back to his original question, this board would look into potential conflicts of interest. The answer is yes, and then from there, there are different levels on how we would take it from there, a memo to the board, did they think this through or do we have our lawyer look into it. Ms. Rizzuto stated that we have hearing capabilities, the problem that we have is that it's time sensitive to do a hearing capability and she is not sure this wouldn't be appropriate to say to the governing body, here's what the issue is, could you rethink this in light of this issue being raised and advise us if any change would be made and if not, then we still have the ability to conduct a hearing if we choose to. The problem that she has with the hearing is what exactly is the hearing going to be, we would have to develop that. We are a young board; we have not actually had that type of hearing occur yet. She is suggesting perhaps something going to the governing body at this point because that addresses the time sensitiveness of the issue in a fashion. Again, the citizen has a legal mechanism which is go to superior court and decry the appointment as being a conflict of interest.

The Board Secretary advised that there was a resolution that was passed by the Mayor and the Council appointing Gregg Paster; she did not know the date but stated she could look it up. Ms. Rizzuto asked if she could give her idea, she stated maybe about two months ago or the beginning of the year. Mr. Zeitlinger stated that this story is from December 23rd, so it had to be prior to that. Mr. Reagan stated that he thought it was about Thanksgiving. Mr. Rizzuto stated so the ability to file a superior court action against a governing body action in general has to be brought to the superior court within 45 days, so the time may have run for the ability of an individual citizen to fight that. But that is not something that is our problem, he can still file and some judge may say the period is for 45 days, but I am going to waive that time period for some reason. She stated we do have some sort of a dilemma, we can deal with it in the way she is suggesting or we can take it under advisement and wait until our next meeting. She asked what the Board wanted to do, try to get a consensus or make a motion.

Mr. Pomeroy stated that he moved to thank Mr. Zeitlinger for bringing this to the Board's attention, but he does think that the Council moved properly well within Mr. Paster's services to perform this and it was necessary. Ms. Rizzuto asked if that is the motion, that the Board does nothing further, Mr. Pomeroy stated yes. Ms. Green seconded the motion.

Roll Call Vote: Adriann Green, Ted Pomeroy, Tom Reagan, Joanne Westphal – yes.

All in favor: Aye  
Motion passed.

Motion to close the public portion of the meeting: Ms. Westphal  
Second: Mr. Pomeroy  
All in favor: Aye  
Motion passed.

2011 RFQ for Board Attorney – Copies of the RFQ response submitted by Anne Marie Rizzuto were submitted to the Board members prior to the meeting. Ms. Westphal asked if all the members had a chance to look at the Ms. Rizzuto's RFQ and were there any questions. There were no questions from the Board members.

Resolution 11-01 Authorizing an Executive Session of the Ethics Board was pulled from the agenda.

Copies of Resolution 11-02 Authorizing Agreement for Professional Services for Ethics Board Attorney were submitted to the Board members prior to the meeting.  
Motion to approve Resolution 11-02: Ms. Westphal  
Second: Mr. Pomeroy  
All in favor: Aye  
Motion passed.

Appointment of Chairperson and Co-Chairperson: Ms. Westphal had advised at the November 18, 2010 Board Meeting that she did not wish to be re-appointed in 2011 for the Chairperson position. Mr. Reagan was appointed Chair and Ms. Green as Co-Chair. All were in agreement with their appointments, which would be effective immediately. The Board thanked Ms. Westphal for being the Chairperson in the past.

#### Other Business:

Ms. Rizzuto stated the first item of business regards the expansion of requirements for the State Financial Statement Form. She asked Mr. Pomeroy that since he was new to the Board, had he gotten the opportunity to read the minutes from the November 18, 2010 meeting. He stated that he thought the primary discussion was regarding the state financial disclosure form. Ms. Rizzuto stated that is what we are going to discuss. Mr. Pomeroy stated he did read the minutes and he thought that Mr. Zeitlinger had raised some excellent points. He stated he is a Certified Public Accountant and it reminds him of a situation where he was called to add to financial statements the issue of credit concentration years ago where they would have a firm who was posting revenues and they would be called to identify in the notes to the financial statements the other individuals or entities which the firm did business with. If you were a law firm and you had a financial stating that you were looking for a loan from a bank, it said one client represented 60% of the billings, what would happen to the firm if they lost that client from a financial standpoint. He stated that in terms of disclosure he could see the necessity of it because people were putting in these financial disclosure statement forms firms that no one have ever heard of, it is a legitimate question who is this firm's clients. That immediately brought him to the question of

where is the law in this and have they down in Trenton cleverly written a law in such a way that they don't have to disclose beyond that point.

Ms. Rizzuto stated that the Local Finance Board is a state agency and they are responsible for the implementation of the state ethics laws and they also shepherd local municipalities and other governmental entities, like Board of Ed type of entities, or Library entities which are governmental but separate from municipalities. They shepherd them, meaning we use the Local Finance Board as a sounding board and an approval body for aspects of governing that touch upon ethics. Not many ethics boards exist, on the county levels they exist but locals don't have them. For example when this Ethics Board was created, the ordinances were reviewed, revised and approved through the Local Finance Board. The ordinances that created this body are local ordinances, were submitted to the state agency responsible for looking at them who could tweak or not tweak them when we were creating the body. So they look at what local governments do. In implementation of the state rules, they have what is called Local Finance Disclosure Statements. They have crafted this form, which has been the form for the past at least 7 to 10 years and in that it talks about sources of income. It tells you what the definition of sources of income is and it also tells you about if you get gifts over \$2000. It also asks you about spousal income. So I as Board Attorney has to submit one, I have to supply all the information requested, but I don't have to list all of my clients and that is sufficient for the submission of this form. These forms are not just for professionals but they also apply to elected officials and they apply to appointed officials; it makes no difference whether you are hired, elected or appointed, everyone has the same form to fill out. It is gathered by the local municipality and sent up to Trenton.

Ms. Rizzuto stated that the query that was made was whether or not this board should consider recommending expansion of the form requirements by way of proposal of an ordinance to the Council of the Borough of Dumont. The initial discussion was in November and at that point the Board wasn't prepared to say yes or no, let's take it under advisement. Tonight's discussion is to further that discussion, does the Board feel that there should be an expansion of the requirements, to require not only your elected officials and your hired professionals, but your volunteer servers on boards, commissions, etc., whether or not you want to require further divulging. That's the first question; the second question is how far you want to take it. Answering those two questions, as said in November and as I say again, comes to the point of whether or not the Board would be unduly making impositions on either volunteers who may not want to do this form to begin with, versus itemizing everything under the sun, more than what the state requires. She stated that local ordinances must comply with state laws but, in general, local ordinances can be more stringent than state laws. Should the council want to make more stringent requirements for financial disclosure, they have the ability to do it, whether we recommend it or not. The way she would propose to the Council that they go about doing it is to make an inquiry to the Local Finance Board, do you have a problem with us making these five additional requirements and getting some guidance from the very body that is responsible for giving us guidance. We could make that inquiry on behalf of the governing body should the governing body want us to. We could do some further discussion here, she would like to hear what the Board thinks about this, bearing in mind she does feel that in most cases the local finance disclosure form is adequate, it is used across the state and while someone might be in public relations and say I work for this public relations firm, she is not so sure that they should

really be required to list all of the clients of that public relations firm. The citizen inquiry seems to be we have the right to know who all those people are in case they are hiring them to do something for the borough illegally. We want to know all the clients so that we can track down whether any other conflicts of interest exist and therefore whether or not there are illegal contracts being led by the Borough of Dumont. That seems to be the goal for requiring expanding client information. It also has a chilling effect upon volunteers, if you are a landscaper, do you want to have to list every single person that you cut grass for, she is not so much sure that you want to, for giving your time here for free. The Board members agreed. She stated the other thing about this is she may have a difference of opinion on this as laid out in the minutes from an earlier discussion but she believes strongly that people who run for public office have a right to be treated in an upstanding way. People who are appointed to commissions and boards like this and willingly for free as volunteers give your time have a right to be treated as upstanding citizens at the outset. If there is truly something wrong that may even rise to the level of illegality because the Mayor and Council shouldn't be voting to get a contract for Joe Schmo if they are making money from Joe Schmo; that is clear. I am not sure that requiring additional financial disclosure gets to that, but it is not up to her, the bottom line from the legal perspective is she feels that this could be a recommendation to the governing body; she feels that the governing body can then make an inquiry to see if they can do it and the parameters of it would be left up to the governing body. We can make all the recommendations that we want so yes, you can take this under further advisement and have her do some research and maybe put together proposals or you can say we have taken this under advisement and this citizen's inquiry can certainly be conveyed to your council people.

Ms. Westphal advised that she doesn't think there is any need to expand the statement.

Ms. Green advised that she feels the same way, the form is fine, in a way maybe it is a little bit too much for a person who is just volunteering also. She doesn't see why we need all this for somebody and she feels the same way, if you are volunteering your time, you are doing this for the good of what you think your board is that you are working on or the town. She stated perhaps she is also naïve, but she feels that people do good things, they try to good things.

Mr. Reagan stated that he is under the belief that this form has nothing to do with this board. If there is an inquiry by the public that somebody on the Council has done something wrong with the form, filled it out wrong, lied, gaining something from that landscaper, money on the side, then that inquiry comes to this board and the board looks at it. The changing of the form has absolutely nothing to do with this board, it is not our form. He has no idea as to why he, as a volunteer has to fill this form out. If this form was expanded by the Borough Council, he probably would resign his position. He doesn't think that expanding it or not expanding it is an Ethics Board issue. If something happens to where someone oversteps their boundaries in some form then, yes, the inquiry comes to us and it is our duty to investigate that overstep.

Ms. Westphal asked if Mr. Zeitlinger had anything more that he needed to say.

Motion to open the meeting to the public: Mr. Reagan

Second: Mr. Pomeroy

All in favor: Aye



Motion passed

Mr. Zeitlinger stated that he can appreciate Mr. Reagan's opinion that it may not be an issue for the Ethics Board to handle. His only comment is that without expanded disclosure, you just have no basis to ever know if there is a conflict of interest. He stated that we can go back and forth all day and he agrees with Ms. Green and others that said volunteers, like the attorney said, have no hiring power so they shouldn't have to fill out the expanded disclosure, so the law or the ordinance could be written in a way that says only elected or appointed officials who have hiring power or purchasing power would, under his suggestion, would have to fill out the expanded disclosure. Ms. Rizzuto stated she is not so sure the state would agree with him on treating people differently. He stated that he thinks talking to the Local Finance Board would be good in that regard. He stated that those are his only points, I made my other points on the document, other states have this expanded disclosure rule in place and what Mr. Pomeroy had said in the beginning, the comment about clever, he would like to think that a lot of politicians especially in Trenton, what being a good politician is trying to make it look like you are doing something without really doing something. This disclosure rule is a perfect example, we have transparency, now we will be able to determine conflicts of interest, and you can't determine conflicts of interest from this. Ms. Green stated that maybe we have a little bit more than what we had before so at least now you have a little bit of something. Mr. Zeitlinger said some people might be happy with that but he is not, as a taxpayer he is not happy with that. He is not happy with the appearance that we have transparency when we don't really have transparency. In the memo he sent to the Board the case in point is Joe Coniglio, the guy from Paramus. He put down that he was a state senator, he put down that he received a salary of more than \$2,000, that's all he had to do, from SJV Consulting. Turns out that money came from Hackensack University Medical Center and at the same time he was gaining that money as a consultant, he's a plumber, but he was gaining that money as a public relations consultant to Hackensack University Medical Center. At the same time he was steering state grants to Hackensack University Medical Center. So while we say we want to believe the politicians who are elected are honest and have a lot of ethical integrity and behave ethically, the reality is that sometimes they don't and this disclosure if he filled it out correctly would have eliminated that and brought that to the floor well before it happened.

Ms. Green asked who actually reads these things, when you send them in who reads them, who is really checking them. Mr. Zeitlinger stated reporters, I am reading them. Who looks at ELEC reports, I do. Mr. Zeitlinger stated that you should be able to go into the Borough Clerk's office and ask for and they should be readily produce it, he can't recall if he had to OPRA it, he probably had to fill out a form and they might have given it to me immediately, if not, it takes 3 to 7 business days and then you get it and then you read it.

Ms. Rizzuto stated that she hears what the citizen is saying but there are other ways to get at whether or not someone is doing something illegal as the example of Coniglio and obviously when the tangled web gets weaved, sooner or later it gets caught. Maybe Mr. Zeitlinger's point is sooner is better than later, which we would all agree, especially in that instance.

The Board agreed that expansion of the requirements for the State Financial Disclosure Form issue has been discussed, is closed and that no further action will be taken by the Board.

Ms. Westphal stated that we will now proceed with the inquiry regarding email communications to Board Members and the Open Public Meetings Act.

Ms. Rizzuto stated that she would take this on since this arose with emails between herself and Mr. Zeitlinger. As we had considered some of these issues as raised in the public meeting in November, thereafter Mr. Zeitlinger had written some communications to the Board as a whole which he forwarded as the proper procedure to the Board Secretary and the Board Secretary as is the proper procedure forwarded it to current board members at that time. Thereafter no responses were received and Mr. Zeitlinger made an inquiry as to why he had not received any responses, etc. and rather than reading all your minds, I did respond that in my legal advice to all of my boards that she is always very careful because in this day of email communication, we have an obligation to maintain our discussions on an Open Public Meetings basis. She wanted to be clear, Mr. Zeitlinger's point, and he did then thereafter state his position that he wanted to communicate to all of you, that's why she put it on the agenda for tonight. The Open Public Meetings Act does not prohibit individual board members from communicating individually even as a board member of the Ethics Board, I feel that and you could respond and I don't have a hard and fast rule to any of my board members saying that you can't respond to a citizen. Most of her boards, however, are circumspect about discussing substantive issues on an individual basis, whether by email or in anything other than the forum for which we are provided which is an open public meeting. The public body is here in an open public meeting to bring discussion and to benefit from hearing the commentary and viewpoint of your other board members and perhaps even a comment from a board member that might change your mind in some opinion; whereas individual telephone communications or individual email communications would not give that same "we're here as a group to reach a consensus or at least to be able to express our opinions individually but as a member of this group". Often, most boards, council members, etc. may say thank you for your inquiry and I certainly will take it under consideration. As a courtesy you can respond to members of the public or you could discuss things substantively on an individual basis but what you cannot do is engage in email communications as a group that may be in violation of the Open Public Meetings Act and certainly then probably become Open Public Record, you are emailing communications as a municipal entity. Her general rule of thumb is the clearest, easiest, most concise and most legal thing to do is to discuss things in an open public meeting. She stated that Mr. Zeitlinger's opinion as expressed in his communication was that there is nothing in the Open Public Meetings Act that prohibits individual communication. While that may be true, more and more boards are taking the position that email communication must be reined in for members of public bodies and are establishing rules. The Government Records Council, which is responsible for Open Public Meeting and Open Public Records Acts, that's a state agency and you can go on their website and see where they have any number of cases where email communications are becoming a sticking point and a thorn in people's side because it is easy to talk by email but yet you are not accomplishing your purpose which is here as a body to discuss things. Her legal advice, whether this citizen disagrees with her or not and even if any of you disagree with her, is that she prefers that board matters not be discussed anywhere except in an open public meeting or in a duly authorized closed session as is permitted under the Open Public Meetings Act. That keeps you out of trouble as board members and as a board as a whole. That being said, she certainly invites any questions or commentary

about this and she certainly thinks that the citizen can have his additional say if that is what the board members want.

Mr. Zeitlinger stated that his only issue is that when you meet only every two months and the bi-monthly meeting gets postponed or cancelled, four months go by. If there is a council meeting and there is a working session that is open to the public and then an executive session that is open to the public, basically you have an opportunity to touch base and discuss something every two weeks or twice a month at least; here it is a four month lag time and that's basically why it seems that it may drag a little bit. Ms. Rizzuto stated clearly that individual board members cannot bring any closure to an issue sent to you by email individually, so the lag time, there's not too much going on with this board that is time sensitive, we just discussed one that might be time sensitive, but that problem is whether or not this board wants to meet on a more frequent basis because you have a lot of business that requires you to meet more frequently. The kinds of things we have in the past dealt with have not shown that.

Ms. Rizzuto stated that she appreciates being able to give the perspective from a public entity attorney. She does want the board to know they can acknowledge receipt of something from a citizen and it is not up to her to tell you that you cannot do this, but there are downfalls and pitfalls that she may have to maneuver you out of. This is not a board policy. Ms. Westphal stated that you had addressed that earlier. Ms. Rizzuto advised remember what the Open Public Meetings says that anyone with two or more that are discussing business of the body as a whole and potentially making decisions is a meeting that must be disclosed to the public.

Ms. Green stated that we had talked about the issue at the November meeting and we were all going to go home and think about it. She thought that Ms. Rizzuto had expressed what she thinks they all felt at the last meeting and if there was something that was very important we would have called a special meeting.

Ms. Rizzuto stated that the Board had its discussion and no further action was needed on this issue.

Motion to close the meeting to the public: Ms. Westphal

Second: Mr. Regan

All in favor: Aye

Motion passed.

Last issue: Question from Council members regarding Council candidate for 2011 Primary Elections.

Ms. Rizzuto stated that she had received this and per our procedure that we set in place last year she was not to do legal work, she was to send it to Ms. Westphal and Ms. Westphal would make a decision if the situation needed to be addressed immediately or brought before the full board.

Ms. Rizzuto stated that the Board Secretary had sent the board members copies of the ordinance before the meeting for their review. We have a person who is interested in running for Council and the issue is that the spouse, his wife, is employed by the borough and works in the court.

She stated that she did make an inquiry at the state courts. The spouse receives a borough check she is paid by the borough so she is a borough employee and whether or not that prohibits

someone from running for office. We have a copy of Ordinance of 2008 #1359 “Fairness in Employment and Elective Office Ordinance”, Section 6 – Non-Familial Hiring. Mr. Pomeroy asked if the spouse is a current employee, which she is. There is a proposal for a candidate whose spouse is already hired. Ms. Rizzuto stated that this does not state that the spouse has to resign if the candidate is elected. Ms. Rizzuto stated that there is no local ordinance that prohibits the candidacy or prohibits the employment and we can communicate that.

Motion to adjourn the meeting: Ms. Westphal

Second: Mr. Pomeroy

All in favor: Aye

The next meeting of the Ethics Board is scheduled for May 19, 2011.

Minutes respectfully submitted by

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Kathy Schaefer, Board Secretary